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No. 83-957

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

YARD-MAN, INCORPORATED,
Petitioner,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), and LOCAL 134, UAW,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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UAW BRIEF IN OPPOSITION

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UAW BRIEF IN OPPOSITION

COUNTERSTATEMENT OF ISSUES PRESENTED

Whether the Court of Appeals had the authority to interpret the collective bargaining agreement as providing for lifetime retiree insurance benefits.[1]

REASONS FOR DENYING THE WRIT

I. There Is No Conflict Among The Circuits As To Whether A Collective Bargaining Agreement Can Provide For Lifetime Retiree Insurance

Yard-Man argues that the courts have reached irreconciliably conflicting opinions as to whether retiree benefits can survive the expiration of the agreement. (Brief p. 4) Yard-Man does not claim that there is any split in the

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[1] The UAW accepts Yard-Man's Statement of the Case.

circuits but rather that there are "two distinct lines of authority." One line allegedly limits retiree insurance to the term of the collective bargaining agreement; the second line (i.e., this case) holds "that retiree benefits once granted are irrevocable throughout the life of the retirees." (Brief p. 5)

However, to support this assertion, Yard-Man only cites various court and *arbitration decisions* which construe specific contractual language and bargaining history and reach varying results.[2]

We submit that there is neither a split in the circuits, nor even two distinct lines of authority.[3] Instead, courts and arbitrators have simply interpreted the language of various collective bargaining agreements on this issue. This approach is consistently followed. Consequently, the results have been as varied as the language and the bargaining history of various agreements would suggest. Yard-man suggests that the efforts of arbitrators and courts to determine the "intent" of the parties by reviewing and comparing the duration language in other benefit

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[2] Yard-Man miscites *Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass*, 404 U.S. 157 (1971) for the proposition that retiree benefits, unless vested, "do not survive the expiration of the agreement and may be reduced or eliminated in later agreements. (Brief 4) However, that portion of the decision cited by Yard-Man for this proposition, 404 U.S. at 181, speaks only to what active workers may elect *for themselves* as between current income or deferred compensation in retirement. The Court did *not* say that active employees may opt to increase present compensation by trading away benefits previously granted to past retirees. Indeed, this court rendered the opposite conclusion: "Under established contract principles vested rights may not be altered without the pensioner's consent." Footnote 20, 404 U.S. at 182.

[3] Yard-Man claims that there is unanimity on the proposition that benefits for active workers do not survive a plant closing or expiration of the labor agreement. (Brief 5, note 7) Yard-Man thus contradicts its own correct references to *Wiley & Sons v. Livingston*, 373 U.S. 543 (1964) and *Nolde Brothers Inc. v. Bakery Workers*, 430 U.S. 242 (1977) which hold just the opposite.

sections of the collective bargaining agreement is "unprincipled," tortuous," or "cannot withstand scrutiny." (Brief 6 and 7)

But such complaints are the common wailing of the losing party in any contract interpretation dispute. This Court has never criticized attempts to interpret ambiguous provisions in collective bargaining agreements by reference to other related provisions of that agreement. It is a common rule of construction of collective bargaining agreements. With different language in these benefit sections, the same contract construction technique could have yielded the opposite result.[4] Thus, despite Yard-Man contrary contentions, their quarrel is not with the technique used by arbitrators and courts—only the results.

II. Criticism Of The Court's Decision Provides No Basis For Granting Review

After claiming it would eschew a "full fledged attack on the merits of the decision" Yard-Man then spends five of its ten argument pages on just such an attack. (Brief 7) But this court does sit as an appellate court of review.

Yard-Man's central and oft-repeated argument is that the termination or duration clause of the collective bargaining agreement limits the duration for all of the obligations and benefits set forth in the agreement including retiree insurance. It does not.

To begin with, the termination clause at Article XXI of the labor agreement serves to terminate the labor agreement, *not* the promises contained in that agreement.[5]

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[4] We note that despite this "unprincipled" approach, Yard-Man does urge the court to look to the termination clause of the labor agreement to imply a duration to the retiree benefits at issue.

[5] Article XXI of the collective bargaining agreement (50a) provides:

> DURATION This Agreement shall remain in force until June 1, 1977, and thereafter for successive periods of one year unless either party shall, on or before the 60th day prior to ex-

The termination clause does not offer a benchmark or a comparison because it is not a benefit section itself. The termination clause argument is really just another way of claiming that the expiration of the collective bargaining agreement terminates *all* rights no matter how clearly the parties may have intended their continuation beyond the term of the agreement itself.

Almost no authority exists to support Yard-Man's argument. Indeed, since all collective bargaining agreements contain such clauses, such a defense would swallow up the rule that parties may contract for post-expiration performance. See generally, *Wiley & Sons v. Livingston*, 376 U.S. 543 (1964).

In *Nolde Brothers v. Local 358, Bakery & Confectionary Workers Union*, 430 U.S. 243 (1977), the Supreme Court specifically rejected the argument that the expiration of the labor agreement, through its duration clause, automatically terminates all rights and benefits. The Court ordered Nolde to arbitrate a dispute over severance pay which arose *after* the labor agreement had expired.

The Circuits have also rejected the termination clause defense on numerous occasions. *Heheman v. E. W. Scipps*, 661 F.2d 1115 at 1121 (6th Cir. 1981); *Upholsterers International Union v. American Pad & Textile Co.*, 263 F.Supp. 765, 767, aff'd 372 F.2d 427 (1967); *USW v. Canron Inc.*, 580 F.2d 77 (3rd Cir. 1978); *E. L. Wiegand v. NLRB*, 650 F.2d 463 (3rd Cir. 1981); *Buchholtz v. Swift & Co.*, 609 F.2d 317 (8th Cir. 1980).

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piration, serve written notice on the other party of a desire to terminate, modify, alter, renegotiate, change or amend this Agreement. A notice of desire to to[sic] modify, alter, amend, renegotiate, or change, or any combination thereof, shall have the effect of terminating the entire Agreement (on the expiration date) in the same manner as a notice of desire to terminate unless before the date all subjects of amendment proposed by either party have been disposed of by agreement or by withdrawal by the party proposing amendment.

III. This Case Does Not Present A Substantial Issue Warranting Review

Yard-Man also argues that this Court should grant review so that the issue can be drawn to the attention of labor lawyers and thus resolved by them in future negotiations. (Brief 12) But surely this is no reason for cluttering this Court's heavy docket. The Court is simply not in the business of advising management and labor regarding possible issues for negotiations.

Yard-Man next argues for review on the proposition that "if retiree benefits once established are deemed immutable; the effect is to eliminate this class of benefit from future negotiations. . . ." (Brief 13) Again Yard-Man demonstrates its misreading of *Pittsburgh Plate Glass*. Active employees cannot be permitted to obtain present improvements by trading away previously granted benefits due currently unrepresented, former employees who have retired. *Pittsburgh Plate Glass* has already resolved this "issue."

Finally, Yard-Man argues that the cost of providing retiree insurance is so great that requiring employers to pay for it can jeopardize the current economic recovery. Moreover, according to Yard-Man, the Sixth Circuit decision effectively shifts the burden of such insurance from the public to the private sector. (Brief 13)

There is a simple answer to such handwringing. No employer has to pay for anything it hasn't contracted for. Had Yard-Man intended to limit the duration of retiree insurance, then all it had to do was secure from the UAW as clear a limitation in the retiree insurance benefit section as was obtained in other benefit areas. It failed to do so. The contract speaks for itself.

CONCLUSION

For the foregoing reasons, the Court should *deny* the Petition.

Respectfully submitted,

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